



November 7, 2023

Tamara Fernandes
Director, Farm Finance Branch
Ontario Ministry of Agriculture, Food and Rural Affairs
2nd Flr SE, 1 Stone Rd W
Guelph, ON N1G 4Y2

Sent via email: Tamara.Fernandes@ontario.ca

Dear Ms. Fernandes,

Re: Protecting Farmers from Non-Payment Act, 2023, Regulatory Consultations

On behalf of the Beef Farmers of Ontario (BFO), Ontario Cattle Feeders' Association (OCFA), Ontario Livestock Dealers Association (OLDA), and the Ontario Livestock Auction Markets Association (OLAMA) we write to you in regard to the discussion paper on the proposed regulatory changes to support the implementation of the *Protecting Farmers from Non-Payment Act, 2023*.

While we believe the *Beef Cattle Financial Protection Program* is generally working well and is supported by the sector, we are supportive of changes that would help modernize and strengthen the program to ensure it works effectively for all users.

On October 16th, 2023, our respective associations met to review each of the proposed recommendations and feedback questions posed in the OMAFRA discussion paper. During the course of our internal discussions a number of questions were raised that we would like addressed. A list of those questions as well as our comments on each request for public feedback has been provided below.

Secondly, the undersigned request that until the questions can be addressed with sufficient time provided to formulate any additional response, that the consultation period be extended or put on hold. Several of the proposed changes could create unintended and potentially costly implications that must be carefully evaluated and considered before proceeding. We acknowledge that there will be further opportunity for comment but in our collective view we would rather see the process slowed so all stakeholders have full context, information and time to evaluate and consider the proposed changes and the impact they may have on the program's operation.

Fall is the busiest time of year for cattle producers, dealers and auction markets and while we appreciate the extensions that have already been granted, additional time to consider these proposals is warranted.

Finally, some of the program stakeholders and associations have expressed concerns with the statement in the discussion paper that the new Act came as a result of extensive consultation. Although some groups participated in preliminary discussions about program modernization, the proposed regulatory approach outlined in the 24 discussion items contained in the discussion paper came as a surprise to a number of groups, which reinforces our call for additional time and consultation on these issues.

We would appreciate a timely response to questions embedded in our comments below, and consideration of our comments and recommendations:

Public Feedback Request #1

- We support the information proposed to qualify as an agreement to purchase or sell, including the inclusion of the dealer's licence number and the check-off fee being paid.

Public Feedback Request #2

- We do not support program flexibility to enter into payment timelines outside of the regulatory requirements (six or nine days). We believe this poses undue risk to the fund. However, sellers that receive partial payment through no prior agreement should not be penalized by the program and should be entitled to the same compensation for the residual amount owing from the sale.

Public Feedback Request #3

- While we are open to consideration of multi-year licences, we would like further clarity with respect to the following:
 - How are dealer licence applications currently evaluated and are all dealers subject to the same level of scrutiny regardless of licence history?
 - How does the ministry envision requirements differing between multi-year licences ("good actors") and single-year licenses if multi-year licence holders are still required to submit financial information (and potentially security) if financials change. As in, please help the industry understand what benefit would be provided to good actors who are approved for a multi-year licence.

Public Feedback Request #4

- We do not support the proposed change to the dealer licence application renewal deadline as most dealers would not have year-end financials ready for submission that far in advance.

Public Feedback Request #5

- We support the increase in dealer licence fees and suggest the rate be set at \$150.
- In addition, we strongly support a requirement to have all dealer agents named and linked to the approved dealer on the published licenced dealers list to ensure sellers and auction markets are aware that the agent is approved by a dealer in good standing.
- Agents of dealers should also be required to pay a fee. We would suggest \$50 per agent. Furthermore, licenced dealers should be made responsible for notifying Agricorp when an agent is no longer purchasing under that said dealers name. Finally, we do not support the listing of agents if they are in arrears with the fund.

Public Feedback Request #6

- We do not see any value in requiring the display of licences as it is rare for cattle buyers and sellers to visit a dealer's business location. This is somewhat different than what occurs in the grain sector where the display of licences may provide more benefit.
- The most critical point for the livestock program is to ensure the licenced dealer and agent list is up to date and communicated to all industry partners, as well as published on Agricorp's website.

Public Feedback Request #7

- a) can the ministry provide more detail on how financial factors are scored currently based on the financial paperwork that is submitted? While the determination of financial responsibility is outlined based on the current point scheme, we have no basis to evaluate how financial information is actually translated into points. For example, the currency ratio that looks at assets/liabilities, how are scores measured based on that information? Scoring insight into the existing seven financial factors will be critical in order to properly assess the proposed adjustments to proof of financial responsibility requirements. It is imperative to be able to quantify the factors and the measurements being used currently to assess their merit. It should be noted that commissions charged by producers and auction markets have not changed significantly, whereas the price of cattle has doubled in recent years. As a result, auctions and dealers are managing significantly larger dollars while their commission-based income has remained relatively static.
 - Past financial performance must be considered as should history of NSF cheques.
 - Late payment reconciliation must be monitored and factored into financial responsibility determination. We question whether this is being done currently but believe it should be. E.g. how late was the payment made?
- b) we cannot provide a meaningful response in the absence of additional information outlining how financial information is translated into points.
- c) we believe dealers should be provided with other mechanisms to demonstrate financial viability if they do not pass the viability test.
- d) can the ministry provide specific examples of qualitative factors that are or could be considered?
- e) Clear guidelines that are communicated to all industry stakeholders on how qualitative and quantitative factors are scored would improve the transparency of the financial viability test.

Public Feedback Request #7a)

- We cannot provide a meaningful response in the absence of additional information outlining how financial information is translated into points.

Public Feedback Request #7b)

- We are open to providing the director with discretion to accept alternative forms of security.

Public Feedback Request #8

- In our view, either the weekly purchase threshold is maintained at the status quo (\$5,000), or the low volume dealer category is eliminated entirely which would result in the same requirements for all dealers regardless of their weekly purchase volumes.

Public Feedback Request #9

- We maintain concerns about the information the ministry is proposing to include in a public registry, including release of information that would under normal circumstances only be obtained through a freedom of information request.
- We do not support any changes to the current dealer license registry with the exception of the following:
 - The registry should list the primary individual associated with the country dealer's licence in cases where the country dealer is operating under a farm business name or numbered company.
 - All dealer agents should be listed on the registry under the approved licenced dealer's name.

Public Feedback Request #10

- We support the expansion of sector/association board membership beyond Beef Farmers of Ontario, and one member representing the operators of community sales under the Livestock Community Sales Act. At a minimum, one member representing the Ontario Livestock Dealers Association should be prescribed in regulation as part of the board composition. We would also support the inclusion through regulation of members from the Ontario Cattle Feeders' Association, Veal Farmers of Ontario, and Dairy Farmers of Ontario.
- All board appointees should be required to be active in the industry.

Public Feedback Request #11

- Can the ministry provide clarification of whether the actuarial review of the FPP fund considered the impact of rising interest rates, financial market volatility and the impact on investment income, and the unprecedented rise in cattle prices in the solvency calculations that led to the proposal to increase the levy fee to 30 cents per head?
- Does the ministry and board believe the proposed levy rate of 30 cents continues to be appropriate in light of these factors?
- Can the ministry clearly outline the levy remittance responsibility (when and who is responsible to collect and remit) under all scenarios as there appears to be confusion amongst stakeholders.

Public Feedback Request #12

- We support the inclusion of provisions dictating out of province eligibility as the current gap has led to questions regarding compensation eligibility and requirements to remit levy fees.
- Regardless of residency, no producer or dealer who has not paid a levy fee, or had a levy fee deducted off the proceeds of a sale, or is not licenced in Ontario, should be eligible for compensation under the program.
- We support the inclusion of access to out of province producers and dealers provided:
 - a levy has been deducted off the proceeds or their sale, and
 - they are licenced in Ontario, which includes producers who are deemed to be licenced by virtue of their business activity.

Public Feedback Request #13

- We do not support moving the collection and remittance responsibility to a livestock commodity organization at this time.

Public Feedback Request #14

- For the purposes of an audit, inspectors appointed under similar Acts, such as the *Beef Cattle Marketing Act* (BCMA), the *Farm Products Agencies Act*, or the *Ontario Farm Products Marketing Act* that were provided powers to conduct inspections under the *Protecting Farmers from Non-Payment Act* could represent an option worth pursuing. However, at this time we are not prepared to endorse a recommendation but would suggest that the regulations should not prevent these types of appointments from occurring in the future provided there is industry support.
- We further believe that if inspection appointment powers were granted, that inspection authorities should be separated between the grains and livestock sectors. As in, a grain inspector is not a livestock inspector, and vice-versa.

Public Feedback Request #15

- Can the ministry provide any background as to why the current timelines to apply for payment from the Board differ between “regular” producers and “designated” producers?
- Unless there is a defensible reason to create separate timelines that industry accepts, we would support the proposal to standardize a claim to the board within 30 days after payment is due.
- If the payment timelines are standardized, we question the need to maintain separate rules for “regular” and “designated” producers. If there is a defensible reason to maintain separate categories of producers that industry accepts, “regular” and “designated” should be specifically defined in the regulations.

Public Feedback Request #16

- The per claim cap of \$125,000 is not sufficient. Regardless of whether the per claim cap continues to be appropriate, we do not support continued separate treatment of dealers and feeder/breeder co-ops unless the ministry can provide appropriate justification for why this should continue to be the case. In the absence of appropriate justification, and given the fact all stakeholders pay the same levy fee, a consistent approach to compensation percentages and total values should be employed. As such, we recommend that all classes of dealers and producers be eligible for compensation at the 95% level with no associated per claim cap.
- We would also like to point out that payment delays from some feeder co-ops continues to be an issue where dealers and auctions are required to pay feeder co-ops within six or nine days, which is almost always adhered to, yet some co-ops are taking up to 30 days to pay the dealer or the auction without penalty.

Public Feedback Request #17

- We support the proposed additional grounds by which the Board may refuse to pay a claim and we have no suggestions for additional grounds to be added.

Public Feedback Request #18

- We support the proposed prescribed conditions, in addition to those set out in the Act, to set out the date the payment is due, and when interest would begin to be incurred with respect to a Cost Order or an Order to Pay. We believe the board should have the ability to recover costs.

Public Feedback Request #19

- We ask that the ministry provide clarity on the criteria that would be used to evaluate a request to stay the requirements of a Compliance Order.
- In general, we do not have concerns with the proposed approaches provided clarity on the above point is provided.

Public Feedback Request #20

- No feedback request included in the discussion document.

Public Feedback Request #21

- Can the ministry please provide a list of example contraventions that could be considered a Type A and Type C offence?
- In general, we support the use of AMP's for Type A offences that are more serious in nature and believe the proposed fees should be doubled, at a minimum to ensure they act as a true deterrent to non-compliance. We would also support reducing the number of fee tiers from four to two or three.
- For Type C offences that represent less serious compliance or administrative contraventions we would urge the ministry to adopt an education first approach where a Type C AMP would only be applied in rare cases of repeated failure to correct issues of non-compliance. In these cases, we would support a similar approach to our recommendation for Type A contraventions that would see proposed fees doubled, at a minimum, and the number of fee tiers reduced from four down to two or three.

Public Feedback Request #22

- We support the proposed retention period of two years for each individual contravention.

Public Feedback Request #23

- While we do not oppose the consideration of the proposed aggravating factors, we would note that proposed aggravating factor one, which states that "*the person who committed the offence profited from committing the offence*" would almost certainly apply to any case of payment default and therefore should be applied with caution pending the circumstances of the specific case.

Public Feedback Request #24

- Personal service (option a), and Courier (option c) should be the only approved methods of serving documents.

On behalf of our respective organizations, we thank you for the opportunity to provide our questions, comments and recommendations. We would welcome the opportunity to discuss our views in further detail.

Sincerely,

Beef Farmers of Ontario
Ontario Cattle Feeders' Association
Ontario Livestock Dealers Association
Ontario Livestock Auction Markets Association